

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION**

KIM COFFEY,

PLAINTIFF,

VS.

CRIMINAL ACTION NO. 2:09CV204-P-A

**ARMSTRONG ENTERPRISES, LLC;
KDXPRESS, LLC;
LLOYD K. ARMSTRONG; and
JOHN DOES #1-10,**

DEFENDANTS.

ORDER

This matter comes before the court upon the plaintiff's April 4, 2011 motion for summary judgment [docket number 77]. After due consideration of the motion, the court finds as follows, to-wit:

The plaintiff filed her motion for summary judgment on April 4, 2011. The defendants' response deadline passed on April 21, 2011. The defendants did not file a response, nor did they contact the court for additional time to do so. On February 16, 2011 the court entered an order allowing defense counsel to withdraw and admonished Defendant Armstrong, who is also the corporate representative for the two defendant corporations, that counsel must be obtained for the corporate defendants (since Mr. Armstrong is not allowed to represent the corporations *pro se*) or risk default judgment. As of this date, over five months later, the defendants have made no contact with the court.

A motion for summary judgment cannot be granted solely because the opposing side has not responded. However, in this case, the plaintiff can seek default judgment. Pursuant to Fed. R. Civ. P. 55, the plaintiff needs to first apply for entry of default judgment with the Clerk of Court and if granted, the plaintiff then needs to file a motion for default judgment with the court.

IT IS THEREFORE ORDERED AND ADJUDGED that:

(1) The plaintiff's April 4, 2011 motion for summary judgment [docket number 77] is **DENIED AS MOOT** and without prejudice; however,

(2) The plaintiff is encouraged to file a motion for entry of default with the clerk's office and, if entered, to file a motion for default judgment thereafter.

SO ORDERED this the 1st day of August, A.D., 2011.

/s/ W. Allen Pepper, Jr. _____
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE